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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

29 OLEAN WHOLESALE GROCERY
30 COOPERATIVE, INC., on behalf of itself
31 and all others similarly situated,

32 Plaintiff

33 v.

34 BUMBLE BEE FOODS LLC,
35 TRI-UNION SEAFOODS LLC, and
36 STARKIST COMPANY,

37 Defendants.

38 Case No. **'15CV1714 W MDD**

39 **CLASS ACTION COMPLAINT**

40 **JURY TRIAL DEMANDED**

41 Plaintiff Olean Wholesale Grocery Cooperative, Inc., by and through its
42 undersigned attorneys, complains and alleges as follows. All allegations herein
43 other than those relating directly to Plaintiff are based on information and belief.

NATURE OF THE ACTION

1. This action arises out of a conspiracy by the three largest producers of packaged seafood products (“PSPs”) in the United States, its territories and the District of Columbia—Bumble Bee Foods LLC, Tri-Union Seafoods LLC, and StarKist Company (collectively, “Defendants”—which began no later than July 24, 2011, and continues to the present (the “Class Period”), to fix, raise, maintain, and/or stabilize prices for PSPs within the United States, its territories and the District of Columbia in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. §§ 1, 3). As used herein, the term “PSPs” refers to shelf-stable seafood products (predominantly tuna) that are sold in cans, pouches or ready-to-eat serving packages.

JURISDICTION AND VENUE

2. This complaint is filed under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, to recover treble damages, equitable relief, costs of suit, and reasonable attorneys' fees for violation of Section 1 and 3 of the Sherman Act, 15 U.S.C. §§ 1, 3. The Court has original federal question jurisdiction over the Sherman Act claim asserted in this complaint pursuant to 28 U.S.C. §§ 1331 and 1337 and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26.

3. Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b), (c), and (d) because Defendants reside, transact business, are found within, and/or have agents within this District, and a substantial part of the events giving rise to Plaintiff's claims occurred and a substantial portion of the affected interstate trade and commerce described below has been carried out in this District.

4. This Court has personal jurisdiction over Defendants because, *inter alia*, each: (a) transacted business in this District; (b) directly or indirectly sold and delivered PSPs in this District; (c) has substantial aggregate contacts with this District; and (d) engaged in an illegal price-fixing conspiracy and agreement to

1 limit capacity that was directed at, and had the intended effect of causing injury to,
 2 persons and entities residing in, located in, or doing business in this District.

3 **PLAINTIFF**

4 5. Plaintiff Olean Wholesale Grocery Cooperative, Inc. is a current resident
 5 of the State of New York. During the Class Period, Plaintiff directly purchased
 6 PSPs from one of more of the Defendants and has suffered pecuniary injury as a
 7 result of the antitrust violation alleged herein.

8 **DEFENDANTS**

9 6. Defendant Bumble Bee Foods LLC (“Bumble Bee”) is a domestic
 10 corporation with its principal place of business located at 280 10th Avenue, San
 11 Diego CA 92101. Bumble Bee produces and sells PSPs throughout the United
 12 States (including this District), its territories and the District of Columbia. Bumble
 13 Bee is privately owned by Lion Capital (“Lion”), based in the United Kingdom.

14 7. Defendant Tri-Union Seafoods LLC is a domestic corporation with its
 15 principal place of business located at 9330 Scranton Road, Suite 500, San Diego
 16 CA 92121. Tri-Union Seafoods LLC produces and sells PSPs throughout the
 17 United States (including this District), its territories and the District of Columbia,
 18 and markets these products under the brand name Chicken of the Sea. Unless
 19 otherwise indicated, Tri-Union Foods LLC will be referred to herein as “CoS”. CoS
 20 is owned by Thai Union Frozen Products (“TUF”), a company based in Thailand.

21 8. Defendant StarKist Company (“StarKist”) is a domestic corporation
 22 with its headquarters at 225 North Shore Drive, Suite 400, Pittsburgh PA 15212.
 23 StarKist produces and sells PSPs throughout the United States (including this
 24 District), its territories and the District of Columbia. StarKist is privately owned by
 25 Dongwon Enterprise (“Dongwon”), based in South Korea.

26 **UNNAMED CO-CONSPIRATORS**

27 9. On information and belief, at all relevant times, other producers of PSPs
 28 willingly conspired with Defendants in their unlawful restraint of trade. All

averments herein against Defendants are also averred against these unnamed co-conspirators.

AGENTS

10. The acts alleged to have been done by Defendants were authorized, ordered, or performed by their directors, officers, managers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

INTERSTATE TRADE AND COMMERCE

11. Throughout the Class Period, there was a continuous and uninterrupted flow of invoices for payment, payments, and other documents essential to the sale of packaged seafood products in interstate commerce between and among offices of Defendants and their customers located throughout the United States, its territories and the District of Columbia.

12. Throughout the Class Period, Defendants transported substantial amounts of PSPs in a continuous and uninterrupted flow of interstate commerce throughout the United States, its territories and the District of Columbia.

13. Throughout the Class Period, Defendants' unlawful activities, as described herein, took place within and substantially affected the flow of interstate commerce and had a direct, substantial and reasonably foreseeable effect upon commerce in the United States, its territories and the District of Columbia.

FACTUAL ALLEGATIONS

14. PSPs are sold to club warehouses, retail groceries, grocery cooperatives, mass merchandisers, and drug stores, among others. According to a May 2012 presentation by Bumble Bee, total United States retail sales of shelf-stable seafood products were \$2.346 billion in 2011 and were estimated to be \$2.397 billion in 2012. In one report, Bumble Bee estimated that canned tuna represents 73% of this value. In the same report, Bumble Bee estimated that total United States retail sales of shelf-stable tuna were \$1.719 billion in 2011 and were estimated to be \$1.750 billion in 2012.

1 15. Defendants are the three largest domestic manufacturers of PSPs. The
2 industry is highly concentrated. According to the aforementioned presentation by
3 Bumble Bee, it had 29% of the domestic shelf-stable seafood market in 2011, CoS
4 had 18.4% and StarKist had 25.3%. The remaining market share was comprised of
5 smaller companies and private label brands. With respect to shelf-stable tuna,
6 StarKist had 34.6% of the market, Bumble Bee had 27.8% and CoS had 19.4%. In
7 December of 2014, the *Wall Street Journal* reported that the Defendants' respective
8 shares of the domestic market for canned tuna were 13% for CoS, 25% for Bumble
9 Bee, and 36% for StarKist. Bualuang Securities reported the shares for the domestic
10 canned tuna market slightly differently, with StarKist at 30%, Bumble Bee at 28%
11 and CoS at 20%.

12 16. This oligopolistic structure within the industry is the result of recent
13 mergers and acquisitions. For example, in 1997, Van Camp Seafood Company
14 ("Van Camp") was acquired by the investment group Tri-Union Seafoods LLC, of
15 which TUF was a member. Thereafter, TUF bought out the other investors to
16 acquire Van Camp completely, which it renamed Chicken of the Sea International,
17 an entity that was later merged into Tri-Union Seafoods LLC. In 2008, Dongwon
18 acquired StarKist from Del Monte Foods for \$363 million. Similarly, in 2014, TUF
19 bought King Oscar, a Norwegian sardine canner that sold 37% of its products in the
20 United States. And in December of 2014, TUF announced the acquisition from
21 Lion (subject to regulatory approval) of Bumble Bee for \$1.51 billion. The
22 combination of CoS and Bumble Bee would have created a virtual duopoly, with
23 the combined entity substantially exceeding the market share of StarKist. TUF had
24 planned to finance the acquisition partly through a preferential public offering to
25 existing shareholders that would have raised approximately \$380 million.

26 17. On July 23, 2015, TUF suspended the preferential public offering in
27 light of a grand jury investigation commenced by the Antitrust Division of the
28 United States Department of Justice ("DOJ"). TUF disclosed on that day that both

1 Bumble Bee and CoS had received grand jury subpoenas relating to an antitrust
 2 investigation of PSPs. The publication *Undercurrent News* further reported in an
 3 article dated that same day that “Thai Union held a conference with analysts on the
 4 suspension of the share offer, in which the company’s management said other US
 5 seafood producers have also received a subpoena requiring the production of
 6 relevant information to the DOJ.” The publication *Global Competition Review*
 7 similarly reported as follows:

8 In a letter to the Bangkok stock exchange on Wednesday,
 9 Thai Union chairman Kraisorn Chansiri confirmed that
 10 the US Department of Justice is investigating his
 11 company’s sector, causing Thai Union to suspend a stock
 12 issuance that had been intended to finance the \$1.5
 13 billion acquisition of Bumble Bee.

14 He said the Thai Union subsidiary Tri-Union Seafoods,
 15 which operates in the US under the Chicken of the Sea
 16 brand, had received a subpoena “requiring Tri-Union to
 17 provide relevant information to the DOJ in relation to an
 18 antitrust investigation of the packaged seafood industry
 19 in the United States.”

20 18. The article goes on to state:

21 An industry expert said the subpoena does not appear to
 22 be limited to the merger review, and early information
 23 indicates the demand for information came from a
 24 separate section of the antitrust division, not
 25 one tasked with analysing deals.

26 It is highly likely that something produced in the merger
 27 investigation sparked this investigation touching the
 28 industry as a whole rather than just the parties to the deal,
 he said.

29 ****

30 The source said others in the industry are now
 31 anticipating that they too will be subpoenaed....

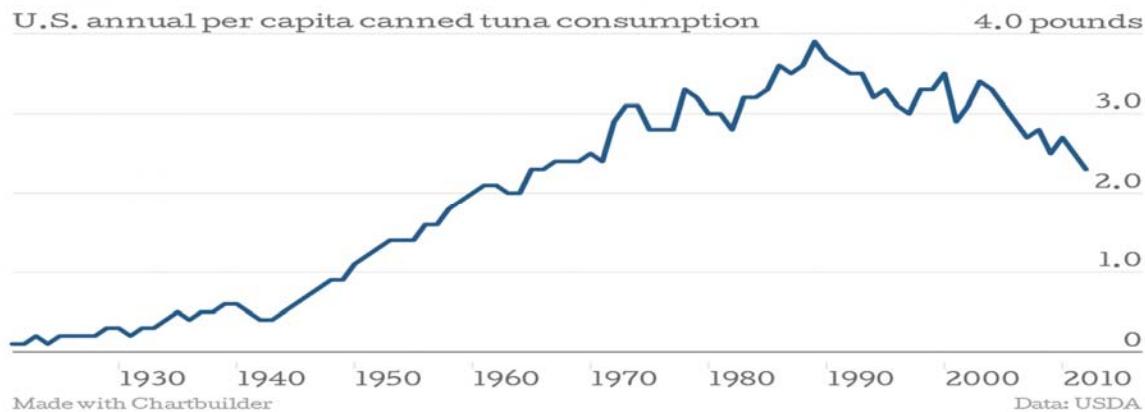
32 19. Based on these statements, it appears that StarKist received a subpoena
 33 as well and that the DOJ’s investigation extends to the entire domestic PSP sector.

34 20. The fact that these companies received subpoenas from a federal grand
 35 jury is significant, as is reflected in Chapter 3 of the 2014 edition of the DOJ’s
 36 *Antitrust Division Manual*, available at

1 <http://www.justice.gov/atr/public/divisionmanual/chapter3.pdf>. Section F.1 of that
 2 chapter notes that “staff should consider carefully the likelihood that, if a grand jury
 3 investigation developed evidence confirming the alleged anticompetitive conduct,
 4 the Division would proceed with a criminal prosecution.” *Id.* at III-82. The staff
 5 request needs to be approved by the relevant field chief and is then sent to the
 6 Antitrust Criminal Enforcement Division.” *Id.* “The DAAG [Deputy Assistant
 7 Attorney General] for Operations, the Criminal DAAG, and the Director of
 8 Criminal Enforcement will make a recommendation to the Assistant Attorney
 9 General. If approved by the Assistant Attorney General, letters of authority are
 10 issued for all attorneys who will participate in the grand jury investigation.” *Id.* at
 11 III-83. “The investigation should be conducted by a grand jury in a judicial district
 12 where venue lies for the offense, such as a district from or to which price-fixed
 13 sales were made or where conspiratorial communications occurred.” *Id.*

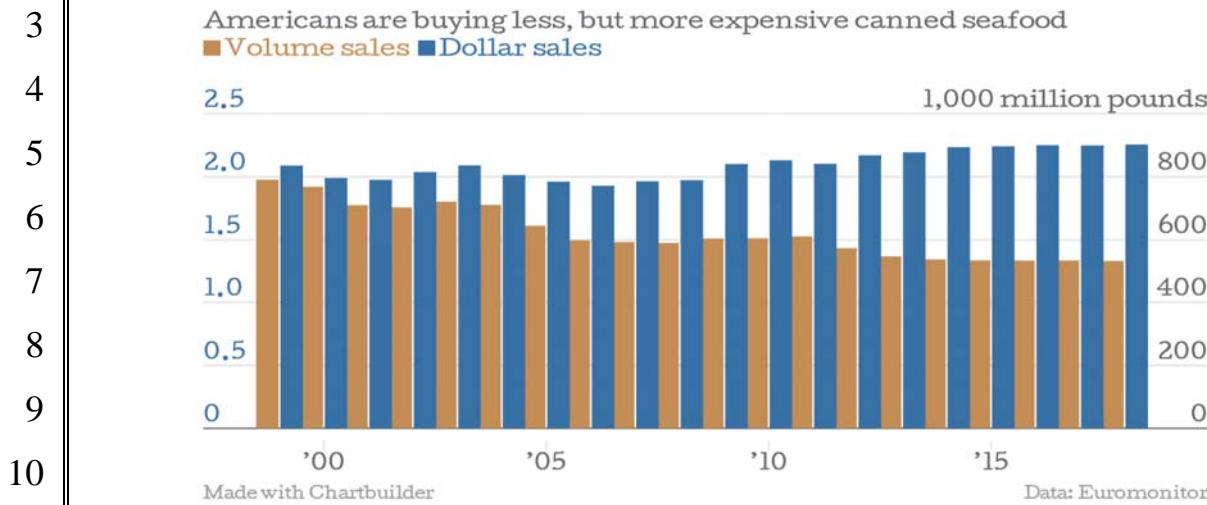
14 21. There are economic indications that support the conclusion that there
 15 was collusive pricing within the domestic PSP industry.

16 22. Consumption of PSPs, particularly canned tuna, has declined over the
 17 last ten years in the United States. The annual consumption per person was 3.1 lbs.
 18 in 2005, but had fallen to 2.3 lbs. in 2013. An article in the *Washington Post*
 19 graphically represented this decline by measuring United States annual *per capita*
 20 consumption from 1930 to 2010:

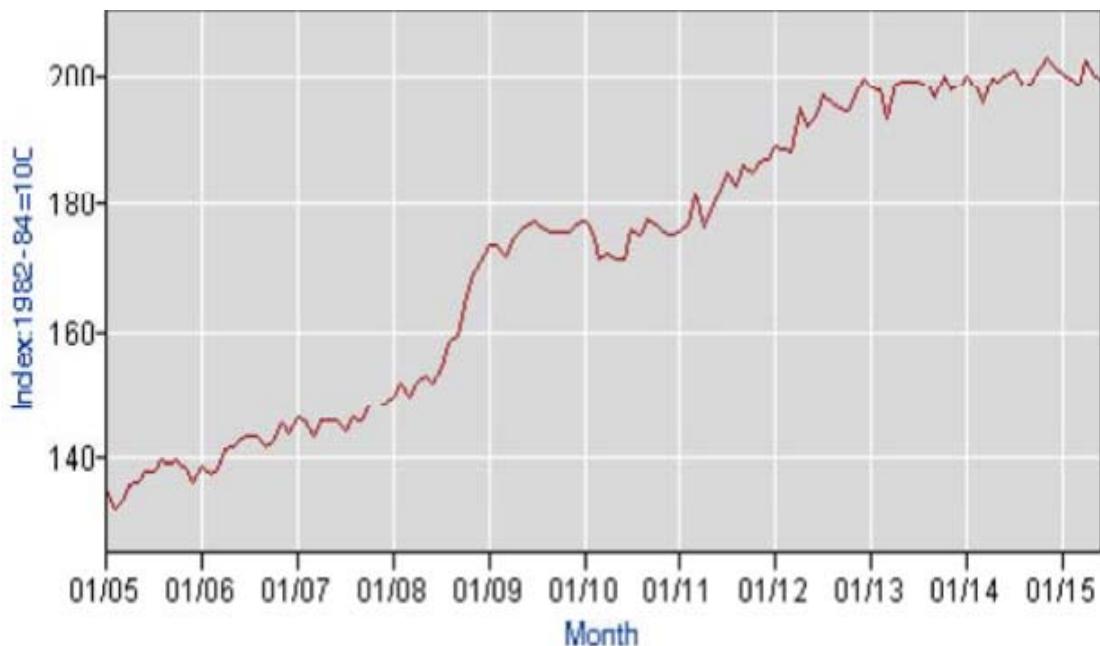


28 The same article presented this graph, showing that while Americans are buying

1 less canned seafood, they are paying more for what they do buy:



23. Given this decline in consumption of the signature PSP, one would expect rational businesses to reduce the prices for PSPs, but that did not happen. The following chart, taken from data available at the Bureau of Labor Statistics, depicts seasonally adjusted U.S. city average prices for shelf stable fish and seafood from January 2005 through the first part of 2015, with the period 1982-84 used as a baseline.



1 24. Raw material costs do not adequately explain these price increases.
 2 While the cost per metric ton of skipjack tuna rose in 2012 and early 2013, it
 3 declined precipitously thereafter. According to the April 19, 2015 issue of *Tuna*
 4 *Market Intelligence*, “[a]s recently as June last year, skipjack was selling at
 5 US\$1,800 in Bangkok. But the price has since plummeted to US\$1,000 since the
 6 beginning of the year, with industry officials anticipating further reductions in price
 7 this year.” Tuna exporters in Ecuador noted in January of 2015 that the price per
 8 metric ton had declined from \$1400 to \$800. And the United Nations Food &
 9 Agriculture Organization noted in its May 2015 “Food Outlook” biannual report
 10 noted that tuna prices had dropped considerably in 2014: “tuna prices declined
 11 significantly due to excess supply, with frozen skipjack prices hitting a 6-year low.”
 12 Despite these drastically declining raw material costs, Defendants did not decrease
 13 prices and try to obtain more market share.

14 25. TUF’s Annual Reports discuss this situation. In its 2013 Annual Report,
 15 TUF stated that “our branded tuna business showed resilient growth from 2012
 16 thanks to the price adjustments in Europe and *more rational market competition in*
 17 *the US.*” (Emphases added). It said in the same report that its future profit margins
 18 would depend upon “[r]easonable US canned tuna competition without
 19 unnecessary price.” (Emphases added). In its 2014 Annual Report, TUF explicitly
 20 noted that this goal had been achieved. It stated:

21 *Thanks to reduced price competition (absence of cut*
 22 *throat pricing) and generally lower fish cost, our own*
 23 *tuna brands marked a great year of increased*
 24 *profitability. Despite minimal sales growth in the US,*
 25 *competitive inventory cost and reasonable market*
 26 *conditions helped lift the margin of our US brand.*
 27 (Emphases added).

28 The same report went on to note that “*sensible market competition*, supported by
 29 lower raw material costs, made it possible for our own tuna brands to expand their
 30 margins through the year despite limited volume growth.” (Emphases added). It
 31 indicated that future revenue growth would again be dependent upon “[r]easonable

1 *US canned tuna market competition that focuses more on consumption creation*
 2 *than market share alone.”* (Emphases added). The “reasonable market conditions”,
 3 “more rational market competition”, “sensible market competition”, avoidance of
 4 battles for market share and “absence of cut throat pricing” that the reports note
 5 could only have come about through collusion. It would have been against the
 6 individual self-interest of each Defendant to eschew increasing market share during
 7 this period by lowering prices.

8 26. There were numerous business opportunities for Defendants to meet and
 9 engage in such collusion. One such opportunity is provided by the Tuna Council.
 10 As explained on that organization’s website:

11 The National Fisheries Institute’s Tuna Council
 12 represents the largest processors and household names
 13 for canned and pouch tuna in the U.S. including *Bumble*
Bee®, *Chicken of the Sea®* and *StarKist®*. The Tuna
 14 Council speaks for the tuna industry on numerous issues
 15 including food safety, labeling, sustainability, nutrition
 16 education and product marketing.

17 27. An example of such joint conduct is provided by the “Tuna the
 18 Wonderfish” advertising campaign of 2011-12. This campaign was bankrolled by
 19 the Defendants and carried out under the auspices of the Tuna Council with the
 20 support of Thai processors. In it, the Defendants teamed up for marketing purposes.
 21 Joe Tuza, Senior Vice-President of Marketing for StarKist, reportedly said that
 22 “[w]e worked together surprisingly well.” He said further that the campaign,
 23 intended to increase consumption of tuna, was based on the hope that “as the water
 24 level rises...all boats rise with the tide”, referring to the three Defendant
 25 companies. The same philosophy appears to undergird the alleged price-fixing
 26 conspiracy.

27 28. Another opportunity to collude was provided through bilateral
 28 copacking agreements between Bumble Bee and CoS. Bumble Bee copacks for
 29 CoS at the former’s plant located in Santa Fe Springs, California with respect to
 30 West Coast sales. CoS does the same for Bumble Bee at the former’s plant in

1 Georgia with respect to East Coast sales. Thus, even before the proposed merger,
2 these two companies were cooperating closely. These interlocking relationships
3 provided an excellent opportunity to collude on pricing.

4 **CLASS ACTION ALLEGATIONS**

5 29. Plaintiff brings this action on its own behalf and as a class action
6 pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on
7 behalf of the following Class (the “Class”):

8 All persons and entities that directly purchased packaged
9 seafood products within the United States, its territories
10 and the District of Columbia from any Defendant or any
11 predecessor, subsidiary or affiliate thereof, at any time
12 between July 24, 2011 and the present. Excluded from
the class are governmental entities, Defendants, any
parent, subsidiary or affiliate thereof, and Defendants'
officers, directors, employees, and immediate families.

13 30. Plaintiff does not know the exact number of members of the Class
14 because such information is in the exclusive control of Defendants. Due to the
15 nature of the trade and commerce involved, however, Plaintiff believes that Class
16 members number at least in the thousands and are sufficiently numerous and
17 geographically dispersed throughout the United States, its territories and the
18 District of Columbia so that joinder of all Class members is impracticable.

19 31. There are questions of law and fact which are common to the claims of
20 Plaintiff and the Class, including, but not limited to:

21 a. Whether Defendants engaged in a combination or conspiracy
22 with their co-conspirators to fix, raise, maintain, and/or stabilize the prices for
23 PSPs;

24 b. Whether the purpose and/or effect of the acts and omissions
25 alleged herein was to restrain trade, or to affect, fix, control, and/or maintain the
26 prices for PSPs;

27 c. The existence and duration of the horizontal agreements alleged
28 herein to fix, raise, maintain, and/or stabilize the prices for PSPs;

1 d. Whether Defendants violated Sections 1 and 3 of the Sherman
2 Act (15 U.S.C. §§ 1, 3);

3 e. Whether Defendants' agents, officers, employees, or
4 representatives participated in correspondence and meetings in furtherance of the
5 illegal conspiracy alleged herein, and, if so, whether such agents, officers,
6 employees, or representatives were acting within the scope of their authority and in
7 furtherance of Defendants' business interests;

8 f. Whether, and to what extent, the conduct of Defendants caused
9 injury to Plaintiff and members of the Class, and, if so, the appropriate measure of
10 damages; and

11 g. Whether Plaintiff and members of the Class are entitled to
12 injunctive relief to prevent the continuation or furtherance of the violation of
13 Sections 1 and 3 of the Sherman Act.

14 32. Plaintiff's claims are typical of the claims of the members of the Class.

15 33. Plaintiff will fairly and adequately assert and protect the interests of the
16 Class. Plaintiff's interests are coincident with, and not antagonistic to, those of the
17 other members of the Class.

18 34. Plaintiff is represented by counsel competent and experience in the
19 prosecution of antitrust and class action litigation.

20 35. The questions of law and fact common to the members of the Class
21 predominate over any questions affecting only individual members.

22 36. A class action is superior to other available methods for the fair and
23 efficient adjudication of this controversy because:

24 a. The prosecution of separate actions by individual members of
25 the Class would create a risk of inconsistent or varying adjudications, establishing
26 incompatible standards of conduct for Defendants.

27 b. The Class is readily definable and one for which records should
28 exist in the files of Defendants.

c. Prosecution as a class action will eliminate the possibility of repetitious litigation.

d. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would require.

e. Class treatment will permit the adjudication of relatively small claims by many Class members who otherwise could not afford to litigate an antitrust claim such as is asserted in this complaint on an individual basis.

37. This class action presents no difficulties of management that would preclude its maintenance as a class action.

COUNT I

Violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. §§ 1, 3)

38. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

39. Defendants and their co-conspirators engaged in a continuing contract, combination, and conspiracy to artificially fix, raise, maintain, and/or stabilize the prices of PSPs within the United States, its territories, and the District of Columbia in violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. §§ 1, 3).

40. Defendants and their co-conspirators agreed to, and did in fact, restrain trade or commerce by fixing, raising, maintaining, and/or stabilizing at artificial and non-competitive levels, the prices of such PSPs.

41. In formulating and effectuating their contract, combination or conspiracy, Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were to artificially fix, raise, maintain and/or stabilize the price of PSPs.

42. The illegal combination and conspiracy alleged herein had the following effects, among others:

a. The prices charged by Defendants to, and paid by, Plaintiff and members of the Class for PSPs were fixed, raised, maintained and/or stabilized at artificially high and non-competitive levels;

b. Plaintiff and members of the Class have been deprived of free and open competition in the purchase of PSPs;

c. Plaintiff and members of the Class have been required to pay more for PSPs than they would have paid in a competitive marketplace absent Defendants' price-fixing conspiracy;

d. Competition in the sale of PSPs has been restrained, suppressed or eliminated.

43. As a direct and proximate result of Defendants' conduct, Plaintiff and members of the Class have been injured and damaged in their business and property in an amount to be determined according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

A. That the Court determine that this action may be maintained as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to members of the Class;

B. That the Court adjudge and decree that the contract, combination and conspiracy alleged herein is a *per se* unreasonable restraint of trade in violation of Section 1 of the Sherman Act;

C. That the Court enter judgment against Defendants, jointly and severally, in favor of Plaintiff and the Class;

D. That the Court award Plaintiff and the Class treble damages;

E. That the Court award Plaintiff and the Class attorneys' fees and costs as well as pre-judgment and post-judgment interest as permitted by law;

F. That Defendants and their co-conspirators, their respective successors,

1 assigns, parents, subsidiaries, affiliates and transferees, and their respective officers,
 2 directors, agents and employees, and all other persons acting or claiming to act on
 3 behalf of Defendants or their co-conspirators, or in concert with them, be
 4 permanently enjoined and restrained from, in any manner, directly or indirectly,
 5 continuing, maintaining or renewing the combination, conspiracy, agreement,
 6 understanding or concert of action, or adopting any practice, plan, program or
 7 design having a similar purpose or affect in restraining competition; and

8 G. That the Court award Plaintiff and the Class such other and further
 9 relief as may be deemed necessary and appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff requests a jury trial on all matters so triable.

12 Dated: August 3, 2015 Respectfully submitted,

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4 *Grocery Cooperative, Inc. and the Class*

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